

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY
10/11/2001

*** FILED ***
10/16/2001
CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

M. Cearfoss
Deputy

LC 2001-000354
Docket Code 512 Page 1
FILED: _____

STATE OF ARIZONA
v.
JEAN-CLAUDE KNOX

GERALD R GRANT

JEAN-CLAUDE KNOX
3434 E BASELINE #166
PHOENIX AZ 85040-0000

REMAND DESK CR-CCC
TEMPE JUSTICE CT-WEST

RULING
REVERSE/REMAND

WEST TEMPE JUSTICE COURT
Cit. No. 1993057
Charge: A. EXCEEDING 85 MPH
DOB: 14-19-1976
DOC: 12-06-2000

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution, Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement since its assignment on September 19, 2001. This decision is made within 30 days as required by rule 9.8, Maricopa County Superior Court Local Rules of Practice. This Court has reviewed the tape recording of the proceedings from the West Tempe Justice Court and the memorandum submitted by Appellant.

The only issue raised by the Appellant concerns the sufficiency of the evidence to warrant the conviction and finding of responsibility. When reviewing the sufficiency of the evidence, an appellate court must not re-weigh the evidence to determine if it would reach the same conclusion as the original trier of fact.¹ All evidence will be viewed in a light most favorable to sustaining a conviction and all reasonable inference will be

¹ *State v. Guerra*, 161 Ariz. 289, 778 P.2d 1185 (1989); *State v. Mincey*, 141 Ariz. 425, 687 P.2d 1180, cert. denied, 469 U.S. 1040, 105 S.Ct. 521, 83 L.Ed.2d 409 (1984); *State v. Brown*, 125 Ariz. 160, P.2d 299 (1980); *Hollis v. Industrial Commission*, 94 Ariz. 113, 382 P.2d 226 (1963).

resolved against the Defendant.² If conflicts in evidence exist, the appellate court must resolve such conflicts in favor of sustaining the verdict and against the Defendant.³ An appellate court shall afford great weight to the trial court's assessment of witnesses' credibility and should not reverse the trial court's weighing of evidence absent clear error.⁴ When the sufficiency of evidence to support a judgment is questioned on appeal, an appellate court will examine the record only to determine whether substantial evidence exists to support the action of the lower court.⁵ The Arizona Supreme Court has explained in *State v. Tison*⁶ that "substantial evidence" means:

More than a scintilla and is such proof as a reasonable mind would employ to support the conclusion reached. It is of a character which would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is directed. If reasonable men may fairly differ as to whether certain evidence establishes a fact in issue, then such evidence must be considered as substantial.⁷

Though not raised by Appellant, after reviewing the tape recording, this Court is convinced that Appellant was denied a substantial due process right to a fair trial when the trial judge failed to consider any of defendant's testimony. After hearing the closing arguments, the trial judge stated, "You know, the only evidence in front of the court today is a certified operator of a certified radar gun." Article II, Section 4 of the Arizona State Constitution guarantees accused due process rights to a fair trial. This right includes the right to have the trier of fact consider testimony presented.

Perhaps the trial judge meant to say the only credible evidence presented today; however, he did not say that. Most importantly, when a defendant has been denied an essential component of due process, such denial constitutes fundamental error.⁸

IT IS THEREFORE ORDERED reversing the judgment of guilt and sentence imposed in the West Tempe Justice Court.

IT IS FURTHER ORDERED remanding this case to the West Tempe Justice Court for a new trial in the same trial court.

² *State v. Guerra*, supra; *State v. Tison*, 129 Ariz. 546, 633 P.2d 355 (1981), cert. denied, 459 U.S. 882, 103 S.Ct. 180, 74 L.Ed.2d 147 (1982).

³ *State v. Guerra*, supra; *State v. Girdler*, 138 Ariz. 482, 675 P.2d 1301 (1983), cert. denied, 467 U.S. 1244, 104 S.Ct. 3519, 82 L.Ed.2d 826 (1984).

⁴ *In re: Estate of Shumway*, 197 Ariz. 57, 3 P.3d 977, review granted in part, opinion vacated in part 9 P.3d 1062; *Ryder v. Leach*, 3 Ariz. 129, 77P.490 (1889).

⁵ *Hutcherson v. City of Phoenix*, 192 Ariz. 51, 961 P.2d 449 (1998); *State v. Guerra*, supra; *State ex rel. Herman v. Schaffer*, 110 Ariz. 91, 515 P.2d 593 (1973).

⁶ Supra.

⁷ Id. at 553, 633 P.2d at 362.

⁸ See *State v. Flowers*, 159 Ariz. 469, 768 P.2d 201 (App. 1989).